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a receiver which receives a broadcast signal having a video program signal and a control information signal;

a first storage element which temporarily stores said control information signal representing a new control program;

a second storage element which stores a control program controlling the operation of a video program corresponding to said video program signal and a predetermined version number; and

a controller which replaces the control program in the second storage element with the new control program based on said control information signal and said predetermined version number.

#### REMARKS

In the Office Action dated December 20, 2001, the Examiner objected to the disclosure on page 7 for a minor typographical error; and rejected claims 27-52 under 35 U.S.C. § 102(e) as anticipated by Metz et al. (U.S. Patent No. 5,666,293) (hereinbelow Metz).

By this amendment, Applicants amend the specification to correct a minor typographical error; cancel claim 30 to incorporate its subject matter into claim 27; and amend claims 27 and 33 to more clearly define the present invention.

Claims 27-29 and 31-52 are currently pending. Attached is an Appendix showing the changes to the specification and claims.

Concerning the objection to the specification, Applicants submit that the

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amendment to the specification obviates the basis for the Examiner's objection.

The Examiner rejected claims 27-29 and 31-52 under 35 U.S.C. § 102(e) as anticipated by Metz. Applicants traverse this rejection.

Amended claim 27 recites a combination of elements including, *inter alia*, a storage element which stores a control program, the control program controlling the operation of a video program. Moreover, the storage element recited in claim 27 includes "a first domain for storing a version number of the control program, a second domain for storing a downloaded program and a predetermined version number, and a third domain for storing the control program."

The Examiner suggests that Metz at col. 36, lines 58-65 teaches storing a predetermined value corresponding to the stored control value. See Office Action dated December 20, 2001, p. 5. To the contrary, Metz at col. 5, lines 58-65 merely describes storing "PID value(s)." Although the PID may correspond to a manufacturer (see Metz at col. 35, lines 64-65), this differs from "storing a downloaded program and a predetermined version number," as recited in claim 27, because merely storing a PID does not enable Metz's apparatus to readily determine whether a download has been successfully completed. Indeed, rather than use the predetermined version number to determine whether a program download is successful (see, e.g., disclosure at p. 8, lines 8-12 and p. 9, lines 2-10), Metz performs multiple checksums. See Metz at FIG. 9, col. 37, line 46, and col. 38, line 30. Accordingly, Metz performs a reload based merely on the

checksum rather than using the predetermined version number. Accordingly, Metz fails to teach or suggest at least one of the elements of amended claim 27 including, for example, "a second domain for storing a downloaded program and a predetermined version number." Claim 27 is not anticipated by Metz. Therefore, the rejection of claim 27 under 35 U.S.C. §102(e) should be withdrawn.

Claims 28-29 and 31-32 depend from claim 27. For at least the reasons given above with respect to claim 27, claims 28-29 and 31-32 are not anticipated by Metz. Therefore, the rejection of claims 28-29, and 31-32 under 35 U.S.C. §102(e) should be withdrawn.

Amended claim 33, while of differing scope, includes recitations similar to those of amended claim 27, including "a second storage element which stores a control program controlling the operation of a video program corresponding to said video program signal and a predetermined version number." Claims 34-37 depend from claim 33. For at least the reasons given above with respect to claim 27, claims 33-37 are not anticipated by Metz. Therefore, the rejection of claims 33-37 under 35 U.S.C. § 102(e) should be withdrawn.

Claim 38 recites a combination including, for example, "storing a predetermined value corresponding to said stored control program in a second domain of the memory." For at least the reasons given above with respect to claim 27, Metz fails to disclose at least this step recited in claim 38. Claim 38 is

not anticipated by Metz, and the rejection of claim 38 under 35 U.S.C. §102(e) should be withdrawn.

The Examiner suggests that "replacing said stored predetermined value with a version number corresponding to said replaced control program in the second domain of the memory" is inherent in the teachings of Metz. Applicants disagree and submit the Examiner has taken official notice with respect to the teachings of Metz. If that is the case, Applicants submit that the Examiner must provide an affidavit or a reference to support the Examiner's position regarding Metz. See M.P.E.P. § 2144.03. Absent such support, the rejection of claim 38 under 35 U.S.C. § 102(e) should be withdrawn for this additional reason.

Furthermore, in Scaltech, the Federal Circuit stated:

Inherency is established if "the natural result flowing from the operation as taught would result in the performance of the questioned function...." However, as we noted in Scaltech II, "[i]nherency may not be established by probabilities or possibilities." (citations omitted)

*Scaltech, Inc., v. Retect, LLC.*, 269 F.3d 1321, 1329, 60 U.S.P.Q.2d 1687, 1692 (Fed. Cir. 2001)(emphasis added). Rather than use the "predetermined value" recited in claim 38, Metz uses a checksum to determine the success of a download and then replaces the old program code with the new downloaded code. Because Metz uses a checksum, it would not be necessary or *natural* for Metz to use the "predetermined value." As a result, Metz does not inherently teach "replacing said stored predetermined value with a version number corresponding to said replaced control program in the second domain of the

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memory." Therefore, the rejection of claim 38 under 35 U.S.C. § 102(e) should be withdrawn for this additional reason.

Claims 39-41 depend from claim 38. For at least the reasons given with respect to claim 38, claims 39-41 are not anticipated by Metz. Therefore, the rejection of those claims under 35 U.S.C. §102(e) should be withdrawn.

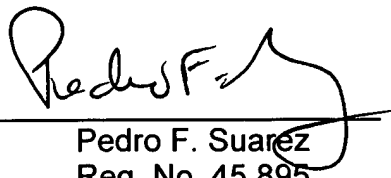
Independent claims 42 and 47, while of differing scope from each other and previous claims, include recitations similar to those of claim 38. Claims 43-46 and 48-52 depend either directly or indirectly from independent claims 42 and 47 respectively. For at least the reasons given above with respect to claim 38, claims 42-52 are not anticipated by Metz. Therefore, the rejection of claim 42-52 under 35 U.S.C. § 102(e) should be withdrawn.

Applicants request reconsideration and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: March 19, 2002

**APPENDIX TO AMENDMENT OF SERIAL NO.: 09/053,650**

**IN THE SPECIFICATION:**

As shown therein, a downloading apparatus for a digital broadcast receiver according to the present invention includes a microcomputer 260 for controlling an overall operation of a system to initialize the system and carry out a bootstrap and a downloading processes, a RAM [260] 280 for temporarily storing a new main program transmitted from a system decoder 110 in a down mode in accordance with the control of the microcomputer 260, and a flash memory 270 for storing main, bootstrap and downloading programs in accordance with the control of the microcomputer 260.

**IN THE CLAIMS:**

27. (AMENDED) A downloading apparatus for a broadcast receiver, comprising:

a receiver which receives a broadcast signal having a video program signal and a control information signal;

a storage element which stores a control program, said control program controlling the operation of a video program corresponding to said video program signal, wherein the storage element further comprises

a first domain for storing a version number of the control program,

a second domain for storing a downloaded program and a predetermined version number, and

a third domain for storing the control program; and

a micro-controller which updates said control program in the storage element based on said control information signal and said predetermined version number.

33. (AMENDED) A downloading apparatus for a broadcast receiver, comprising:

a receiver which receives a broadcast signal having a video program signal and a control information signal;

a first storage element which temporarily stores said control information signal representing a new control program;

a second storage element which stores a control program controlling the operation of a video program corresponding to said video program signal and a predetermined version number; and

a controller which replaces the control program in the second storage element with the new control program based on said control information signal and said predetermined version number.

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